

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LAMONT J. HOWARD,	)	Case No.: 1:20-cv-00933-JLT (HC)
	)	
Petitioner,	)	ORDER DISMISSING PETITION WITH LEAVE
	)	TO FILE A FIRST AMENDED PETITION
v.	)	
	)	[THIRTY-DAY DEADLINE]
SUPERIOR COURT METROPOLITAN	)	
DIVISION OF COUNTY OF KERN,	)	
Respondent.	)	
	)	

Petitioner filed a Petition for Writ of Habeas Corpus on June 5, 2020. (Doc. 1.) A preliminary screening of the petition reveals that the petition fails to name the proper respondent. Therefore, the Court will DISMISS the petition with leave to file an amended petition.

**I. DISCUSSION**

**A. Preliminary Review of Petition**

Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . .” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed.

1            B. Failure to Name a Proper Respondent

2            A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer  
 3 having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254  
 4 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme  
 5 Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated  
 6 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has  
 7 “day-to-day control over” the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.  
 8 1992); see also Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions  
 9 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation  
 10 or parole, the proper respondent is his probation or parole officer and the official in charge of the  
 11 parole or probation agency or state correctional agency. Id.

12            Petitioner names the “Superior Court Metropolitan Division of County of Kern” as the  
 13 Respondent. However, the Superior Court Metropolitan Division of County of Kern is not the warden  
 14 or chief officer of the institution where Petitioner is confined, and, thus, does not have day-to-day  
 15 control over Petitioner. Petitioner is presently confined at the California Correctional Institution in  
 16 Tehachapi, California. The current director or warden of that facility is the person Petitioner should  
 17 name as Respondent.

18            Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition for  
 19 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326  
 20 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).  
 21 However, the Court will give Petitioner the opportunity to cure this defect by amending the petition to  
 22 name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d 1026,  
 23 1029 (5th Cir. 1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir. 1975) (en banc)  
 24 (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington, 394  
 25 F.2d 125 (9th Cir. 1968) (same). In any amended petition, Petitioner must name a proper respondent.  
 26 Petitioner will be granted an opportunity to file a First Amended Petition to cure this deficiency.  
 27 Petitioner is advised that he should entitle his pleading, “First Amended Petition,” and he should  
 28 reference the instant case number. Failure to comply with this order will result in dismissal of the

1 action.

2 **II. ORDER**

3 Accordingly, the Court **ORDERS:**

- 4 1) The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE for  
5 failure to name a proper respondent; and  
6 2) Petitioner is GRANTED thirty days from the date of service of this order to file a First  
7 Amended Petition.

8  
9 IT IS SO ORDERED.

10 Dated: **July 13, 2020**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE